Supreme Court, U.S.
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No. 99-1151

In The

Supreme Court of the United States

DONALD P. PARKS,

Petitioner,

vs.

UNITED STATES OF AMERICA,
STATE OF FLORIDA,
PALM BEACH COUNTY,
THE CITY OF BOYNTON BEACH,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Although Petitioner sets forth his inquiry in three paragraphs, the essential question presented by Petitioner, Donald P. Parks, is whether he has been deprived of a fundamental right to a free computerized legal database to be created and funded either by the federal, state or local government.

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BRIEF IN OPPOSITION

Respondent, The City of Boynton Beach (Boynton Beach) respectfully believes that this Court lacks jurisdiction to grant a Writ of Certiorari because Petitioner, Donald P. Parks (Parks), failed to timely file his Petition and failed to timely file a notice of appeal to the Court of Appeals. Parks also lacks standing to bring a claim as alleged because there is no fundamental right involved, nor is there any right to be derived from Amendment IX to the United States Constitution. Finally, Parks raises a non-justiciable political question. Accordingly, Boynton Beach respectfully requests the Court to deny the Petition.

JURISDICTION

Respondent, The City of Boynton Beach, believes that this Court lacks jurisdiction under 28 U.S.C. § 2101(c) to hear Park's petition because he did not timely file it within ninety days of the order of dismissal of his appeal by the United States Court of Appeal for the Eleventh Circuit on December 23, 1997.

STATEMENT OF THE CASE

On October 7, 1996, Parks, a resident property owner of Boynton Beach, was cited for violations of the City building code.[1] When Parks did not comply with Boynton

[1] Ch. 15, Art. IX-15-120 §§ II.1, IV.1.B, IV.1.D, IV.1.H, V.1, and V.2., Boynton Beach City Code

Beach's request, a public hearing was held on December 18, 1996, which resulted in the issuance of a code enforcement order requiring compliance by February 1, 1997.

When Parks failed to fully comply by February 4, 1997, he was given notice of a second code enforcement hearing, to be held on February 19, 1997. Parks appeared at this hearing. The issue was tabled to allow further time for compliance. When it appeared that Parks had not fully complied, a third code enforcement hearing was scheduled for March 19, 1997.

On March 19, 1997, it appeared that Parks remained non-compliant, thus a certification of fine of twenty-five dollars per day from February 1, 1997, until compliance, was issued.

Parks' response was to file a suit, titled "Claim of Unconstitutionality", in the District Court for the Southern District of Florida on April 1, 1997. Joined as defendants were the "U.S. Government", "Florida State Government", "Palm Beach County Government", and the "Boynton Beach Government". Also named were a number of individual Boynton Beach city employees, including code enforcement officers Robert Wandelt and Scott Blasie; police chief Marshall Gage; parks superintendent John Wildner; assistant city attorney Michael Pawelczyk; acting city manager Dale Sugarman and others not yet identified.

Parks' complaint alleged that the law is so inherently complex as to render it unavailable, in violation of a fundamental right allegedly found in the Eighth, Ninth or Fourteenth Amendments to the United States Constitution. Parks, *inter alia*, requested relief in the form of a

court order requiring the government defendants to publish a computerized legal database allowing free, instantaneous access at all times.

On April 3, 1997, the district court, *sua sponte*, dismissed Parks' complaint without prejudice under *Fed. R. Civ. P.* 12(b)(6) for failure to state a cause of action upon which relief can be granted. Pet. App. E.

Parks filed a notice of appeal in the district court on May 1, 1997. On July 29, 1997, the Clerk of the United States Court of Appeals for the Eleventh Circuit issued a memorandum to counsel and parties noting that Parks' brief and record excerpts were to be filed within forty days, or by September 8, 1997. Pet. App. F 2. Parks did not file either his brief or record excerpts by this date.

On September 25, 1997, the Eleventh Circuit sent notice to Parks informing him that, pursuant to *11th Cir. R.* 42-1(b), he was required to file his brief, record excerpts, and motions for leave to file out-of-time within fourteen days, or suffer dismissal. Pet. App. F 4. A reminder letter was sent to Parks on October 7, 1997. Pet. App. F 5.

Parks then filed a brief that did not contain a certificate of service to opposing parties, record excerpts nor a motion for leave to file out-of-time. Pet. App. F 8, 9. On October 16, 1997, Parks was notified of the deficiencies and given an additional fourteen days, to November 3, 1997, to correct the deficiencies or suffer dismissal. Pet. App. F 8, 9. On November 4, 1997, Parks mailed a Motion to File Brief and Record Excerpts Out-of-Time. Pet. App. F 11. On November 17, 1997, Parks mailed his record excerpts.

On December 23, 1997, Parks motion for leave to file out-of-time was denied by the chief judge, and Parks' appeal was dismissed by the clerk upon direction of the court.[2] Pet. App. D 1, 2.

On December 31, 1997, Parks filed a second notice of appeal of the district court's April 3, 1997 order of dismissal, claiming a fundamental right to access to a free, computerized legal database. Resp. App. 1.

On April 7, 1998, the Eleventh Circuit requested the parties' respective positions on jurisdiction. Boynton Beach objected to jurisdiction under *Fed. R. App. P.* 4(a)(1)(B) because the second notice of appeal was filed more than sixty days after the district court dismissal.

On September 11, 1998, The Eleventh Circuit dismissed the second appeal for lack of jurisdiction. Pet. App. C. On September 22, 1998, Parks filed his third notice of appeal in the district court. Resp. App. 2. The Eleventh Circuit again requested the parties' respective positions on jurisdiction. Boynton Beach again raised Parks' failure to timely file a notice of appeal.

On March 25, 1999, the Eleventh Circuit dismissed Parks' third appeal for lack of jurisdiction since it was untimely under *Fed. R. App. P.* 4(a)(1)(B). Pet. App. B 1. In its order of dismissal, the court noted that, if any relief were available to Parks, it would be by motion to reinstate the appeal to be filed with the court of appeals, and

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[2] Pursuant to *11th Cir. R.* 42-1(b)

not by successive notices of appeal filed in district court.[3] Pet. App. B 1.

Despite this admonition, Parks filed a fourth notice of appeal in the district court on April 1, 1999. Resp. App. 3.

On November 22, 1999, after requesting and receiving positions on jurisdiction, the Eleventh Circuit dismissed Parks' fourth appeal for lack of jurisdiction for failure to timely file a notice of appeal in the district court. Pet. App. A. The order noted, for the second time, that Parks could not reinstate his earlier appeal by filing successive notices of appeal in the district court. Pet. App. A.

From the dismissal of his fourth appeal, Parks petitioned this Court for a Writ of Certiorari on January 5, 2000. Parks' only claim to this Court is that he has a fundamental right to be provided a free, computerized legal database from the government under Amendment IX to the United States Constitution.

REASONS FOR DENYING THE WRIT

I. The Court lacks jurisdiction.

It is a fundamental principle of this Court that, in order to grant any order, there must be jurisdiction.[4]

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[3] *11th Cir.* Rule 27-1(c)(11).

[4] *Steel Company v. Citizens for a Better Environment*, ___ U.S. ___, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210 (1998).

Indeed, "[w]ithout jurisdiction, the Court cannot proceed at all in any cause."[5]

This Court lacks jurisdiction because Parks' Petition was not filed within ninety days of the Eleventh Circuit's order of dismissal on December 23, 1997. As held in *Missouri v. Jenkins*, this Court has "no authority to extend the period for filing except as Congress permits."[6] 28 U.S.C. § 2101(c) provides specific time requirements for filing a petition for writ of certiorari. § 2101(c) requires that a petition for a writ of certiorari "shall be taken or applied for within ninety days after the entry of such judgment or decree."[7] This ninety day limit is "mandatory and jurisdictional", and a petition that is filed after this limit expires must be dismissed.[8]

For the purposes of § 2101(c), the time period to file a petition for writ of certiorari commences on the date that the judgment or decree below was entered.[9] It is only if the lower court "changes matters of substance or resolves a genuine ambiguity in a judgment previously rendered [that] the period within which an appeal must be taken or petition for certiorari begins to run anew."[10]

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[5] *Ex Parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1888).

[6] *Missouri v. Jenkins*, 495 U.S. 33, 45, 110 S. Ct. 1651, 1660, 109 L.Ed.2d. 31 (1990)

[7] 28 U.S.C. § 2101(c).

[8] *Jenkins*, 495 U.S. at 45.

[9] *Federal Trade Commission v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-12, 73 S. Ct. 245, 247, 97 L.Ed. 245 (1952).

[10] *Id.*

Following the dismissal of his case by the district court, Parks appealed the dismissal to the Eleventh Circuit Court of Appeals. However, this appeal was dismissed on December 23, 1997. Thus, in order to timely comply with § 2101(c), Parks had ninety days from December 23, 1997 in which to file a petition for writ of certiorari. Plainly, Parks has failed to do so since the ninety day period expired on March 24, 1998 and his Petition for Writ of Certiorari was not filed in this Court until January 5, 2000.[11]

Moreover, Parks' filing of three subsequent notices of appeal in the district court did not toll the period for filing his petition for certiorari under § 2101(c). These subsequent appeals were dismissed for lack of jurisdiction as untimely filed under *Fed. R. App. P.* 4(a)(1)(B). Thus, none of the three subsequent orders of dismissal changed any matter or substance or resolved any ambiguity that would toll the time period of § 2101(c).[12] Parks was given more than ample notice of what was required, but simply failed to follow the free directions given.

Since Parks failed to timely file his Petition for Writ of Certiorari in this Court on or before March 24, 1998, it should be dismissed for lack of jurisdiction.

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[11] *28 U.S.C. § 2101(c); Jenkins*, 495 U.S. at 45.

[12] *Minneapolis-Honeywell Regulator Co.*, 344 U.S. at 211-12

II. Parks' notice of appeal was not timely filed.

Parks' fourth notice of appeal was not timely filed with the district court, thereby depriving the Eleventh Circuit Court of Appeals of jurisdiction and, consequently, depriving this Court of jurisdiction over this Petition. "[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but that of the lower courts in a cause under review'."[13] When a lower court lacked jurisdiction, this Court has "jurisdiction on appeal, not for the merits, but merely for the purpose of correcting the error of the lower court in entertaining the suit."[14]

Under 28 U.S.C. § 1254(1), Parks may only seek to invoke the jurisdiction of this Court by appealing a "judgment or decree" from the Court of Appeals.[15] As the Eleventh Circuit did not have jurisdiction to consider Parks' fourth notice of appeal, as it explicitly so found in its order of dismissal, this Court does not have jurisdiction to consider certiorari.[16]

It is axiomatic that a court of appeals cannot issue a "judgment or decree" if it lacks jurisdiction to decide the

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[13] *Steel Company*, 118 S. Ct. at 1013; *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S. Ct. 162, 165, 79 L.Ed. 338 (1934).

[14] *Steel Company*, 118 S. Ct. at 1013; *United States v. Corrick*, 298 U.S. 435, 440, 56 S. Ct. 829, 831, 80 L.Ed. 1263 (1936).

[15] *28 U.S.C. § 1254(1).*

[16] *Steel Company*, 118 S. Ct. at 1013.

case.[17] As the Eleventh Circuit did not issue a "judgment or decree," only an order of dismissal, it never assumed jurisdiction over Parks' fourth appeal.

In order to timely file an appeal in the court of appeals, a party must comply with the time requirements of *Fed. R. App. P.* 4(a)(1)(B). Compliance with Rule 4 is "mandatory and jurisdictional" and cannot be waived by the parties.[18] It is undisputed that Parks' fourth notice of appeal was not filed until well after the sixty day time period, allowed under Rule 4(a)(1)(B), expired in June 1997.

As the Eleventh Circuit never assumed nor possessed jurisdiction over Parks' fourth appeal, this Court does not have jurisdiction to consider Parks' Petition.

III. Parks lacks standing.

Parks' Petition for Writ of Certiorari should be denied because he has no standing. Although Parks claims that he has a fundamental right to a free, computerized legal database in order to insure access to the courts, Parks has not suffered any "injury in fact" so as to provide him standing to sue. It is clear that, in order to

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[17] *Zipperer by and through Zipperer v. School Bd. of Seminole County, Fla.*, 111 F.3d 847, 850 (11th Cir. 1997).

[18] *Zipperer*, 111 F.3d at 850; *Hollins v. Dept. of Corrections*, 191 F.3d 1324, 1327-8 (11th Cir. 1999); *Ingram v. Acands, Inc.*, 977 F.2d 1332, 1336 (9th Cir. 1992).

bring suit in federal court, a plaintiff must first demonstrate standing.[19] This Court has "insisted on strict compliance with this jurisdictional standing requirement."[20] A plaintiff must show that he has suffered an "injury in fact" that is concrete, actual or imminent, traceable to the defendant, and that the court can likely impose a remedy.[21]

In *Lewis v. Casey*, this Court held that there is no "freestanding right to a law library or legal assistance."[22] In *Lewis*, prison inmates brought suit alleging that access to the courts had been denied because their prison law library facilities were inadequate. Because the inmates could not point to an actual injury in fact, other than mere general allegations of inadequacy, they lacked standing.[23]

Standing requires an actual injury in order to "prevent courts of law from undertaking tasks assigned to the political branches."[24] Moreover, it is not the role of the courts, but that of the political branches, "to shape the

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[19] *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, ___ U.S. ___, 120 S. Ct. 693, 704, ___ L.Ed.2d ___ (2000).

[20] *Raines v. Byrd*, 521 U.S. 811, 820, 117 S. Ct. 2312, 2317-8, 138 L.Ed.2d 849 (1997).

[21] *Friends of the Earth*, 120 S. Ct. at 704; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136-7, 119 L.Ed.2d 351 (1992).

[22] *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2179-2180, 135 L.Ed.2d 606 (1996).

[23] 518 U.S. at 350.

[24] 518 U.S. at 349.

institutions of government in such fashion as to comply with the laws and the Constitution."[25]

In explaining the requirement of an actual injury, this Court analogized the situation of a inmate who was *not* deprived of any necessary medical treatment, yet brings suit on the grounds that the medical facilities were generally inadequate. Such a suit would be dismissed for lack of standing because the prisoner could not state how he was actually injured. Finding such a violation would mean that the "essential distinction between judge and executive would have disappeared" because the courts would then be required to invade the province of the legislature to assure medical care.[26]

Thus, actual injury cannot be demonstrated on the basis that access to courts is denied in "some theoretical sense."[27] Rather, there must be some showing that the alleged shortcomings hindered efforts to file a legal claim, such as the inadequacies being so pervasive as to inhibit the filing of a complaint or providing notice of a technical requirement.[28] This Court then noted that providing sophisticated legal services in the absence of an actual injury amounts to "permanent provision of counsel, which we do not believe the Constitution requires."[29]

Similar to the prisoners' claims in *Lewis*, all Parks has alleged are mere allegations that the "legal might of its

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[25] *Id.*

[26] 518 U.S. at 354.

[27] *Id.*

[28] *Id.*

[29] *Id.*

citizens has been greatly diminished because of the number of laws and the complexity of these laws." Petition, p. 5, ¶ 5. Although Parks alleges that the law in a general, theoretical sense is complex, Parks does not allege that *his* access to the courts has been denied. He wishes for a computerized legal database to be provided to him free of charge, yet he alleged nothing to suggest that he had been specifically injured because he has not had unfettered free access to a facility not yet created.

Thus, Parks had no standing from the outset and thus, his Petition should be denied.

IV. There is no fundamental right to a free, computerized legal database.

Although Parks' Petition alleges that he has been denied a "fundamental" right, such a right has never been recognized as emanating from the Constitution.

This Court has consistently recognized that the "Due Process Clauses generally confer *no affirmative right to government aid,* even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual."[30] Although due process requires protection against unwarranted government interference, it does not require entitlement to governmental aid, even if it is contended that

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[30] *DeShaney v. Winnebago County Dept. of Social Serv.*, 489 U.S. 189, 194, 109 S. Ct. 998, 1002, 102 L.Ed.2d 249 (1989) (emphasis added).

such aid is necessary.[31] Thus, a governmental entity cannot be sued for failing to provide something that it had no duty to provide.[32]

In *Lewis*, this Court held there is no right to be provided with continuous, free legal assistance.[33] Although prison inmates have been afforded added affirmative duties of care, due, by reason of the incarcerated status, to their inability to care for themselves, this Court explicitly declined to require that even they be afforded "permanent provision of counsel." [34] Despite the general duty to provide a law library to inmates, such a right *does not exist* for private citizens who have not suffered any a deprivation of liberty.[35]

In contrast to the inmates in *Lewis*, Parks has never claimed to have been incarcerated during the pendency of these proceedings. Rather, he is private citizen whose access to the law, particularly to public law libraries readily available to him in the federal and state courthouses, has not been hindered by the restraints affecting prison residents. In fact, his physical access to the law has

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[31] *Id.; Harris v. McRae*, 448 U.S. 297, 317-18, 100 S. Ct. 2671, 2688-2689, 65 L.Ed.2d 784 (1980).

[32] *DeShaney*, 489 U.S. at 197-8.

[33] *Lewis*, 518 U.S. at 351.

[34] 518 U.S. at 354.

[35] *Id.; Bounds v. Smith*, 430 U.S. 817, 821, 828, 97 S. Ct. 1491, 1492-93, 1494, 1498, 52 L.Ed.2d 72 (1977); *see also Estelle v. Gamble*, 429 U.S. 97, 103-104, 97 S. Ct. 285, 290-91, 50 L.Ed.2d 251 (1976).

not been abridged, nor has he ever made such an allegation. His complaint is that what is provided is simply inconvenient.

As an unrestrained citizen, Parks has no fundamental right to be provided unfettered, sophisticated access to the law because the Constitutional concept of due process does not envision it. Thus, neither the federal, state or local governments have any affirmative duty to provide Parks with an free, computerized legal database.[36]

Further, Parks merely complains of an entitlement to be provided such a database.[37] Indeed, his Petition requests this Court to order federal, state or local authorities to establish a "Department of Legal Information" to create, publish, and fund a computerized legal database. Petition, p. 5. Since all Parks seeks is a judicial creation of such a facility, there clearly is no Due Process violation presented.

V. The Ninth Amendment provides no cause of action.

The Ninth Amendment does not confer a cause of action upon Parks to claim that he has been denied a "fundamental right" because the Ninth Amendment is a rule of interpretation, rather than an independent source of rights. Although this Court has never specifically addressed this issue, the Courts of Appeal have uniformly rejected alleged claims based upon the Ninth Amendment as a source of substantive constitutional

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[36] *Lewis*, 518 U.S. at 351; *Bounds*, 430 U.S. at 821.

[37] *DeShaney*, 489 U.S. at 197-8.

rights.[38] The Ninth Amendment serves to clarify that the specific enumerated rights found in the Bill of Rights were not intended to foreclose the existence of other fundamental rights.[39] However, it does not specify that it is the source of any particular right.

Thus, Parks' argument that the Ninth Amendment confers a fundamental right upon him to a free, computerized legal database fails, and his Petition should be dismissed.

VI. Entitlement to a free, computerized legal database is a non-justiciable political question.

Derived from the principle of separation of powers, the judicial branch cannot decide cases or controversies that revolve around policy choices and value determinations constitutionally committed for resolution by the legislative or executive branches.[40] In *Baker v. Carr*, this Court identified six categories of political questions:

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[38] *Froehlich v. State Dept. of Corrections*, 196 F.3d 800, 801 (7th Cir. 1999); *Bernal-Vallejo v. I.N.S.*, 195 F.3d 56, 63 (1st Cir. 1999); *U.S. v. Broussard*, 80 F.3d 1025, 1041 (5th Cir. 1996); *San Diego Gun Club Rights Committee v. Reno*, 98 F.3d 1121, 1125 (9th Cir. 1996); *Cannon v. Group Health Serv. of Oklahoma*, 77 F.3d 1270, 1275-6 (10th Cir. 1996); *Concerned Citizens of Nebraska v. U.S. Nuclear Regulatory Comm'n*, 970 F.2d 421, 426-7 (8th Cir. 1992); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 271 (7th Cir. 1982); *U.S. v. Warin*, 530 F.2d 103, 108 (6th Cir. 1976).

[39] *Froelich*, 196 F.3d at 801; John E. Nowak & Ronald D. Rotunda, *Constitutional Law*, § 11.7 (5th ed. 1995); Laurence H. Tribe, *American Constitutional Law*, 776 n.14 (2d ed. 1988).

[40] *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 230, 106 S. Ct. 2860, 2866, 92 L.Ed.2d 166 (1986).

1. A textually demonstrable constitutional commitment of the issue to a coordinate political department;

2. A lack of judicially discoverable and manageable standards for resolving it;

3. The impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;

4. The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government

5. An unusual need for unquestioning adherence to a political decision already made; or

6. The potentiality of embarrassment from multifarious pronouncements by various departments on one question.[41]

Any one of these hallmark categories is sufficient to render a case or controversy non-justiciable as a political question.[42]

Parks admittedly requests this Court to create a new executive agency to *publish and fund* a computerized legal database. Petition, p. 5. It is a request to this Court to substitute itself into the role of the legislative or executive branches and make a policy determination that there should be an *entitlement* to such a database.[43]

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[41] *Baker v. Carr*, 369 U.S. 186, 217, 82 S. Ct. 691, 710, 7 L.Ed.2d 663 (1962)

[42] *Id.* at 217.

[43] *Lewis*, 518 U.S. at 351, 354; *DeShaney*, 489 U.S. at 197-8.

The enactment of such a database is "textually committed", under both Article I, §§ 1, 8, cl. 1, 8, cl. 3 (powers of Congress) and Article II, §§ 1, 2 (powers of the President) of the United States Constitution because these provisions provide the mechanism for initiation, enactment and funding of legislation. Moreover, this Court could not make such a decision without implicitly expressing a "lack of respect for a coordinate branch of government".[44]

Generating the requisite funding for a database would be textually committed to Article I, § 8, cl. 1, the "taxing and spending" clause of the United States Constitution. Implementation of such a facility would require standards that cannot be judicially discovered and necessitate a policy determination of what is in the best interests of the citizenry. This is the Constitutional role of the legislative and executive branches.

In short, if Parks determines that there is a compelling need for a free, computerized legal database, he should solicit support for it from his elected representatives since there is no entitlement to establishment by order of the judiciary.

CONCLUSION

The Petition should be denied for several reasons. This Court lacks jurisdiction because this Petition was not filed timely in either the Court of Appeals or in this

[44] *Baker*, 369 U.S. at 217.

Court. Moreover, Parks has never had standing to sue, nor is there any basis for his claim found in the United States Constitution. The issue he belatedly presents, is a non-justiciable political question.

Respectfully Submitted,

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For The Eleventh Circuit

RESPONDENT'S APPENDIX TO BRIEF IN OPPOSITION

APPENDIX 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON
Ref: 97-4818 First Appeal
(Eleventh Circuit Court of Appeals)

"Claim of Unconstitutionality"

(Filed Dec. 31, 1997)

Second APPEAL

Donald P. Parks
Plaintiff

vs.

UNITED STATES GOVERNMENT, et al.,
Defendant

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most

Certificate of Service

On December 31, 1997 the following parties were sent copies of the Appellant's Second Appeal of case 97-4818 by Mail via the United States Post Office.

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APPENDIX 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON
Ref: 97-4818 First Appeal
(Eleventh Circuit Court of Appeals)
Ref: 98-4038 Second Appeal
(Eleventh Circuit Court of Appeals)

"Claim of Unconstitutionality"

(Filed Sept. 22, 1998)

Third APPEAL to the Full Court

Donald P. Parks
Plaintiff

vs.

UNITED STATES GOVERNMENT, et al.,
Defendant

This is the third appeal of this case involving "Questions of Constitutionally". Because the Constitution is the supreme law of this nation it must follow that any law or rule of order that prevents this Court from hearing and ruling on the Constitutional issues involved

in this case must be unconstitutional.

Since the court(s) have yet to rule on any Constitutional issue raised in this case the appellant does hereby request that this case be heard by the entire court.

APPENDIX 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8227-CIV-FERGUSON
Ref: 97-4818 First Appeal
(Eleventh Circuit Court of Appeals)
Ref: 98-4038 Second Appeal
(Eleventh Circuit Court of Appeals)
Ref: 98-5464 Third Appeal
(Eleventh Circuit Court of Appeals
to the Full Court)

"Claim of Unconstitutionality"

(Filed April 1, 1999)

Forth APPEAL, Second Appeal to the Full Court

Donald P. Parks
Plaintiff

vs.

UNITED STATES GOVERNMENT, et al.,
Defendant

This is the forth appeal of this case involving "Questions of Constitutionally". Because the Constitution is the supreme law of this nation it must follow that any law or rule of order that prevents this Court from hearing and ruling on the Constitutional issues involved in this case must be unconstitutional.

Since the court(s) have yet to rule on any Constitutional issue raised in this case the appellant does hereby request that this case be heard by the entire court.

Therefore:

The plaintiff does hereby appeal to this Court to:

1. Hear and make a ruling on the Constitutional issues involved.
2. Issue a Summary Judgment that the Government(s) named in this suit have failed to provide a suitable legal defense for the citizens of the United States and that the Government(s), either individually or jointly, will immediately fund the development of a system as described in the preceding paragraph 9.
3. Overturn the decision rendered by Wilkie D. Ferguson, Jr., United States District Judge for the United States District Court, Southern District, on April 3, 1997 and allow all issues not settled in the preceding paragraph of this case to be heard by the court.

Note 1: The "law", for purposes of this appeal, is defined to include all laws, statutes, rules, regulations, ordinances, and other expressions of any elected, appointed, or hired person that are binding on any citizen of the United States; all documents and computer programs that define the meanings of these laws, statutes, rules, regulations, ordinances, and other expressions; and all documents and computer programs that define how these laws, statutes, rules, regulations, ordinances, and other expressions are to be enforced.

/s/ Donald P. Parks
Donald P. Parks

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April 1, 1999